Gina Harrison
Director
Federal Regulatory Relations

1275 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20004
(202) 383-6423

PACIFIC TELESIS
Group-Washington

August 26, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Re: *CC Docket No. 96-146, Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996; Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*

On behalf of Pacific Bell and Nevada Bell, please find enclosed an original and six copies of their *"Comments"* in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Policies and Rules
Governing Interstate Pay-Per-Call
and Other Information Services Pursuant to
the Telecommunications Act of 1996

In the Matter of

Policies and Rules Implementing
the Telephone Disclosure and Dispute
Resolution Act

CC Docket 96-146

COMMENTS OF PACIFIC BELL AND NEVADA BELL

I. INTRODUCTION AND SUMMARY

Pacific Bell and Nevada Bell (collectively, "Pacific") hereby submit comments with regard to Pay-Per-Call and Information Service Providers ("IPs"). In addition to supporting many of the Commission's proposals to safeguard against the abuses that have been so prevalent in the area of IP calls, we suggest several additional steps we believe the Commission should take to protect customers and local exchange carriers.

First, we believe the Commission should require presubscription agreements for all IP calls not subject to blocking, including 500, 700, 800, 888 and other toll free calls, and collect calls.

The agreements should not be executed electronically, and should be subject to a 10-day lag time during which the IP must notify the party responsible for paying the telephone bill of the existence of the agreement.

Second, we suggest that the Commission disallow collect IP calls, or impose mandatory disclosure rules similar to those it proposes for toll free calls. Otherwise, collect calls will be an easy way to circumvent the Commission's Rules.

Third, we suggest that the Commission require that before an IP or its agent may pursue civil collection activities, including lawsuits, against the customer, the IP must exhaust its administrative remedies in pursuing disputed charges, and prove compliance with Section 228 and Part 64 of the Commission's Rules.

Finally, we urge the Commission to be vigilant in detecting new means of circumventing the IP rules. For example, IP abuses involving 10XXX dialing appear to be on the rise; because such calls do not, on their face, reveal to the billing carrier that they are IP calls, the ordinary disclosures often do not accompany such calls.

II. NEW RULES REGARDING PRESUBSCRIPTION AGREEMENTS, COLLECT CALLS, AND SECONDARY COLLECTION ACTIONS ARE NECESSARY

The Commission asks whether there are measures other than those it proposes which might prevent IPs from subverting existing rules. NPRM, ¶¶ 13, 41, 46. We have several suggestions.

A. Presubscription Agreements Should Be Required For All IP Calls That Cannot Be Blocked, and the Commission Should Add Additional Presubscription Agreement Safeguards

First, we suggest that presubscription agreements be required for IP calls on all numbers for which blocking is not available, and that the Commission add additional presubscription agreement safeguards to prevent the abuses associated with "instant presubscription." Blocking currently is

available only for 900 and 976 calls; thus, all other dialing patterns used for IP calls -- including 500 calls, 700 calls, 800, 888 or other toll free access code calls, and collect calls -- should require presubscription agreements.

Moreover, we do not believe the presubscription agreements should be executed in electronic form. Such agreements present risks of misuse, as the Commission observes. Id., ¶ 42 (asking whether "safeguards should be required to ensure that [electronically transmitted presubscription] agreements are valid commercial instruments and that electronic execution does not encourage the abuses that arose from oral execution of presubscription contracts."). If the Commission determines it must allow electronically transmitted agreements pursuant to 47 U.S.C. Section 228(c)(7)(c)(i), we advocate a rule that requires a 10-day lag time between transmission of the agreement by the customer to the IP or its agent and the right to charge for the relevant IP calls. This lag time will help prevent the abuses that result when "instant presubscription" occurs. See id., ¶¶ 42, 43.

In addition, because of the risk that presubscription agreements may be executed by those not responsible for paying the telephone bill, without the knowledge and to the detriment of the responsible customer, the IP should inform the customer whose name appears on the affected account of the execution of the agreement. The IP should also instruct the customer that if the customer wishes to object to the presubscription arrangement, he must do so within the 10-day lag time period. If the IP receives no objection from the customer whose name appears on the account, it may begin billing for calls to its service, but may not do so sooner.

Finally, we would support rules allowing "roving" presubscription agreements tied to a particular phone number -- as long as they are executed by the party responsible for paying the bills to that number. A customer with such a presubscription agreement could make calls to the IP from any

phone, and provide an account number or PIN that would alert the IP and others responsible for billing the calls of the number to which the call should be billed. This arrangement would avoid problems associated with callers who use hotel and other business phones to run up IP bills; such callers would be required to give an account number or PIN tied to their own phone number in order to place the calls. The calls would then be billed to the customer's pre-designated phone number, rather than to the hotel or other business line.

We realize these proposals -- for expansion of the situations in which presubscription agreements are required, for limits on electronic agreements, and for notice to the customer responsible for the telephone service -- involve more work and delay than the ordinary "instant presubscription" process. However, we are concerned that without this type of safeguard the problem of pay-per-call abuses will continue unabated. Because we bill for these pay-per-call services, we are often the first party a customer calls to complain about erroneous billing. We have found that in this area "an ounce of prevention is worth a pound of cure." That is, up-front safeguards that ensure that the consumer is informed that he will be billed for IP calls, and of the nature of the charges, go a long way to avoiding problems once bills are rendered and it is too late to prevent the charges from being incurred.

B. Collect Calling Should Not Be Allowed For IP Calls

We do not believe collect calling should be allowed for IP calls. The Commission correctly acknowledges that the 1996 Act creates new proscriptions for toll free calls. NPRM, ¶ 21. However, it allows its rules regarding collect calls to continue to require compliance only "to the extent possible." NPRM, ¶ 21 (amending Rule 64.1510(b) so that "to the extent possible" language continues to apply only to "information services provided on a collect basis . . . ."). If the Commission does not impose an outright ban on the use of collect calls to bill IP services, we believe the rules regarding collect calls must be strengthened considerably.

Collect calls allow IPs to avoid many of the rules the Commission proposes. As the proposed rules now stand, if IPs cannot technically comply with the disclosure requirements of Rule 64.1510(b) for collect calls, they will not be obligated to furnish any of the consumer protections necessary to prevent abuses. Thus, in a collect call situation, the customer likely will not know that the "charges [for the call] are for non-communications services" (64.1510(a)(2)(i)(A)), that "[n]either local nor long distance services can be disconnected for nonpayment . . ." (64.1510(a)(2)(i)(B)), that "access to pay-per-call services may be involuntarily blocked for failure to pay legitimate charges" (64.1510(a)(2)(i)(D)), because proposed Rule 64.1510(b) does not require any of these disclosures with regard to collect calls "to the extent [it is not] possible" to provide them. This loophole must be closed, or IPs will simply migrate to the collect call model to avoid the new mandatory toll free rules in Rule 64.1510(c) and Section 228(c)(8)(B)(i) of the 1996 Act. See NPRM, ¶ 21.

If the Commission is not willing to prohibit collect IP calls, or require the same disclosures for collect calls that it requires for toll free calls, it should at the very least require the execution of presubscription agreements for collect calls. These agreements should adhere to the requirements we set forth in the previous section: the agreements should not be executed electronically, they should be subject to a 10-day lag time before they take effect, and the IP should have to notify the party responsible for the telephone service of the execution of the agreement.

C. The Commission Should Circumscribe "Secondary Collection" Activities

One significant area of customer confusion and complaint regarding IP calls involves "secondary collection" activities -- civil collection actions pursued outside the billing dispute process. We propose a rule that precludes IPs from filing civil collection lawsuits or otherwise pursuing collection of disputed amounts until they have exhausted their administrative remedies for resolving such disputes pursuant to the Commission's Rules. Thus, for example, if a customer disputes an IP

charge on his bill, the IP should be required to show that it has satisfied all of the disclosure requirements of Section 228 and Part 64 of the Commission's Rules before it can use a collection agency, file a collection lawsuit, or otherwise pursue collection activities against the customer.

The reason for our proposal is simple: while customers who dispute such charges and have them removed from their telephone bills expect that there will be an investigation to determine the legitimacy of the charges, they do not expect to receive dunning notices or to be served with a lawsuit while this investigation is pending. Our experience is that customers who are pursued for collection in this manner become angry and feel betrayed by the local telephone company, which has removed the disputed charge from the bill and referred the matter to the IP or its agent for resolution.

The IP or its agent should be required to complete this investigation and establish that the charges to the customer are legitimate pursuant to Section 228 and the Commission's Rules before it instigates other collection activities. This is a simple matter of exhausting administrative remedies before the IP has a right to initiate civil action, and thus fully respects IP's rights. As with other situations involving exhaustion of administrative remedies, the statute of limitations for filing a civil collection action will be tolled pending the outcome of the administrative process, so the IP's cause of action is preserved.

The Commission should also provide that when a billing dispute for an IP call arises, the carrier who bills for the call must liberally "adjust" the bill to remove the disputed charge pending the resolution of the billing dispute. Because customers' telephone service cannot be disconnected for nonpayment of these calls, removing the charges from the bill protects against accidental adverse "treatment," avoids the imposition of late charges, and otherwise removes the disputed charge from the carrier's relationship with its customer. If, on the other hand, the disputed charge is allowed to remain on the bill, it becomes an ongoing point of contention between the billing carrier -- which has nothing

to do with the IP call other than the fact that it bills for it -- and that carrier's customer. Billing carriers should not be caught in the middle in this way. Rather, the bill should be "cleaned up" and the dispute between the customer and the IP or its agent resolved separately.

Finally, an IP or its agent defending a billing dispute involving an IP call should be required to provide sufficient call detail -- the number called (or in the case of a collect call, the number initiating the collect call), the date and length of the call, the type of service provided and the like -- to promote a resolution of the billing dispute, even if this information did not appear on the initial bill. This information -- which we are required to disclose when we pursue billing disputes with our customers -- will assist both parties in resolving the dispute with full knowledge of the relevant facts.

Given the abuses attendant to IP calls, customers trying to clean up their bills after the abuses occur should not also have to face collection agencies, dunning notices and lawsuits. The Commission can easily remedy this situation by requiring that IPs exhaust administrative remedies as we suggest.

D. The Commission Should Remain Vigilant With Regard to New Dialing Patterns Designed to Avoid the Commission's Rules

As the Commission correctly observes, each time it promulgates rules designed to prevent abusive IP practices, new practices emerge. The Commission should ensure that it is gathering information about such practices regularly and that it takes action quickly to prevent huge losses before they occur.

In this regard, there is one dialing pattern that we see as a potential source of abuse. It involves 10XXX calling. An IP obtains a 10XXX "dial around" code that connects the customer to its switch. Once the caller reaches the IP's platform, he dials a 10-digit number (NPA XXX-XXXX) to commence the IP call. To the carrier doing the billing, the call looks just like a 10XXX access call.

Thus, the carrier does not know to categorize the call as an IP call -- and provide the attendant disclosures -- on the bill. The customer thus does not receive the benefit of these disclosures, and the safeguards currently in place are avoided. We suggest the Commission promulgate rules now which prohibit this practice, or impose the same presubscription, disclosure and other rules for 10XXX IP calls as we suggest it impose for other IP calls. In addition, the IP or its agent must affirmatively disclose to the billing carrier that the relevant 10XXX code is associated with IP calls, so the carrier knows to give the appropriate disclosures and other billing treatment to the resulting calls.

III. WE SUPPORT MANY OF THE COMMISSION'S PROPOSALS

With but a few modifications, we support many of the Commission's proposals. We strongly support proposals to eliminate the exemption from IP rules accorded to any service provided pursuant to tariff; this loophole must go. NPRM, ¶ 33.

We support the Commission's proposal that presubscription agreements must be executed by a legally competent adult (id., ¶ 42), but request that the Commission add the proviso that the adult must be the party responsible for the telephone service. Thus, the Commission's proposed modification to Rule 64.1501(b)(1) should be changed to require: "(1) A written contractual agreement . . . between an information services provider and a legally competent adult responsible for the telephone service to which the information services will be billed. . . ." We also suggest a minor edit to the Commission's proposed Rule 64.1504(c)(2)(vi) to add the word "up" after the word "hang," so that the Rule provides for an introductory message on IP calls that "Clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever."

We agree that a customer should have pre-existing credit, charge or calling cards used to bill IP calls, and that an actual card must have been delivered to the party to be billed prior to assessment of any charges. NPRM, ¶ 43.

We support the Commission's technical change in paragraph 44 that amends Section 64.1504(c), (d) and (e) to state explicitly that the protections afforded to "the calling party" also apply to the "subscriber to the originating line." This change is consistent with our proposal above that Section 64.1501 require that the subscriber to the line to be charged, and not just any competent adult using the telephone, be the one to execute any presubscription agreement.

We also agree that a carrier's billing of calls dialed to an 800 or other toll-free number on the basis of ANI is a violation of Section 228(c)(7)(A) of the Communications Act unless the call involves use of telecommunications devices for the deaf (NPRM, ¶ 45), but urge the Commission to expand the rule so that it binds IPs and their agents, and prohibits them from seeking to have a carrier bill a call for them based on ANI. We have no objection to the Commission revisiting issues involving use of ANI to bill callers to toll-free numbers now, and believe extending the rules to IPs and their agents is the best regulatory response because it places responsibility not only on a billing carrier, but on the parties which derive revenues from the calls. Id.

With regard to separate billing of IP calls, we agree that separate identification of charges for normally toll-free calls is essential to eliminating customer confusion about the charges. We believe that any cost to carriers of such separate billing is more than made up for through the savings of time, money and customer goodwill associated with these good billing practices. See id., ¶ 46. As we note in Section II of these Comments, we strongly support rules which apply to IP calls other than those made through toll-free numbers, but urge the Commission, where it has jurisdiction, to impose such rules on IPs and their agents, as well as on carriers. Id.

Finally, we believe strongly that many of the abuses associated with IP calls would be alleviated if the Commission required all such calls to be offered exclusively through 900 numbers. Id., ¶ 48. Such calls currently may be blocked, avoiding many of the problems associated with IP calls.

Further, as the Commission observes and as we illustrate with regard to 10XXX dialing, new dialing patterns designed to avoid the Commission's Rules are constantly emerging. Limiting IP calls to 900 numbers would go a long way to limiting the options available to IP to subvert the rules.

IV. PACIFIC'S STRICT POLICIES WITH REGARD TO IP CALLS HAVE REDUCED CUSTOMER COMPLAINTS

Pacific has had strict policies in place regarding IP billing since 1995, and has experienced a notable reduction in customer complaints as a result. Thus, our suggestions are not idle speculation, but the result of concrete experience. We provide some illustrative details here to demonstrate that up-front safeguards will go a long way to solving the problems associated with IP calling.

According to its tariff and its contracts with clearinghouses that provide billing services for IPs, Pacific Bell only bills such calls if they conform to several rules, including among other things a requirement that the billing record list the number the end user dialed and the name of the information service; that the clearinghouse establish procedures for resolving all end user inquiries promptly; and, most importantly, that the total number of end user complaints be limited to specified levels. Violations of these and other rules intended to protect the end user will result in suspension by Pacific Bell of its obligation to bill IP calls for the party affected. As a result of Pacific's policies, customer complaints related to IP calls have diminished significantly.

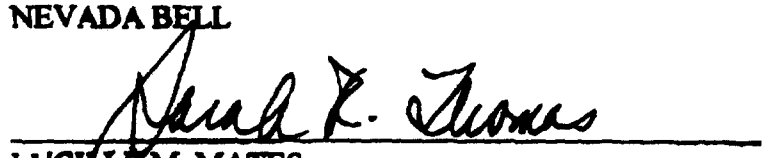
These results reveal the benefits that can be obtained through strict requirements for IP billing. We ask the Commission to study Pacific's model and urge carriers to adopt similar requirements for the IPs and clearinghouses for which the carriers provide billing services. We believe industry initiatives, coupled with better IP rules, will help combat the persistent problems associated with IP calling.

V. CONCLUSION

We acknowledge that some of our proposals and those of the Commission will impose new costs and burdens on IPs and their agents, and in some cases, carriers. However, our experience is that up-front safeguards in the long run cost the industry and its customers far less time, money and effort than the billing disputes which occur at the back end. As we say above, the old adage that "an ounce of prevention is worth a pound of cure" aptly describes the approach the Commission should take in the pay-per-call and information services arenas.

Respectfully submitted,

PACIFIC BELL
NEVADA BELL



LUCILLE M. MATES
SARAH R. THOMAS

140 New Montgomery Street, Rm. 1522A
San Francisco, California 94105
(415) 542-7649

MARGARET E. GARBER

1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 383-6472

Their Attorneys

Date: August 26, 1996

CERTIFICATE OF SERVICE

I, Sandra L. McGreevy, hereby certify that copies of the foregoing "**COMMENTS OF PACIFIC BELL AND NEVADA BELL**" in Docket 96-146, were served by hand or by First Class United States Mail, postage prepaid, upon the following parties on the service list this 26th day of August, 1996.

Sandra L McGreevy

Sandra L. McGreevy
140 New Montgomery Street, Room 2512
San Francisco, CA 94105

SERVICE LIST

Mary Romano*
Common Carrier Bureau
2025 M. Street, N.W.
Room 6120
Washington, D.C. 20554

John B. Muleta*
Chief, Enforcement Division
Federal Communications Commission
2025 M. Street.
Room 6008
Washington, D.C. 20554

International Transcription Services, Inc.*
2100 M Street, N.W.
Suite 140
Washington, D.C. 20054

* Hand Delivered